Supreme Court, U.S.
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No. 99-1420

IN THE
SUPREME COURT OF THE UNITED STATES

NANCY LANTHORN ELLIS, et al.,
Petitioners,

v.

WASHINGTON COUNTY, et al.,
Respondents.

**ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

REPLY BRIEF

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I. THE OBVIOUS DISPUTE AS TO MATERIAL FACTS SHOULD HAVE PRECLUDED SUMMARY JUDGMENT

Seventeen pages of defendants' Response were devoted to asserting that plaintiffs misrepresented the facts and evidence in this case. The vast majority of the cites for plaintiffs' facts/evidence, however, came from the District Court's Memorandum Opinion or the Sixth Circuit Opinions. The factual disputes merely validate plaintiffs' position below that summary judgment should have been precluded. Judge Daughtrey, in her dissenting/concurring opinion at the Sixth Circuit, recognized that error and vigorously opposed the action taken by her two colleagues.

II. FAILURE TO TRAIN FACTS

Defendants have accused plaintiffs of going "beyond the bounds of advocacy and overstatement to the point of misrepresentation" regarding defendants' failure to train. Response at p. 10. The record, however, demonstrates that accusation to be more projection than reality.

1. Allegedly, one week of training from TCI, which covers an enormity of subjects, is given to each Johnson City jailer. Defendant Garland's and head jailer Edmonson's basic training occurred in 1986 (App. 573-74)[1]. The record does not even establish whether suicide was covered at that time.

2. In the critical years of 1992 through 1996, Johnson City jailers did not receive the training that Johnson City represented for its certification. (App. 672-74, 644). For three consecutive years (surrounding Lanthorn's death), Johnson City blatantly misrepresented its training. Id.

3. Not only were training hours misrepresented, defendant Garland knew for years that his training was being misrepresented and did nothing to report those lapses. *Id.*

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[1] All references are to the Joint Appendix page number "[App. ___]."

His claimed eight hours of "suicide" training, his claimed eight hours of "suicide liability" training, and his claimed eight hours of "screening inmates" training, were all total misrepresentations by his own admission. Further, his "training" on medical needs was fabrication as well (App. 672-75).

4. The extent of defendant Garland's training was woefully inadequate (App. 672-75).

5. Moreover, Edmonson, the Johnson City Jail superintendent, was not properly trained (App. 649-50). He did not receive training in 1992, 1993, or 1994 that was represented. *Id.* He could not recall any training on suicide risk during the time period, or dealing with inmates with seizures (App. 649-50).

6. Defendant Hensley testified that although he was regularly dispatched to confront mentally disturbed people, he received **no** training in dealing with people with psychiatric or emotional problems, even though he attended all of the training made available to him (App. 742, 1001).

7. Lieutenant Beard, **Chief Administrator** of the Washington County Jail, had absolutely **no** corrections training until October of 1994 (two months after Lanthorn's death) (App. 576).

8. The only training defendant Mitchell received was one week of basic training that covered everything from jail safety procedures to tort law (App. 695-97) and his recollections of same were vague and inadequate (App. 695-97). Mitchell also failed to receive any additional training (even in 1994 and 1995, after Lanthorn's death) (App. 579).

9. Jamerson, who was **in charge** of the Washington County Jail, could not recall the specifics of any training related to suicide (App. 686-87), and could not recall any training regarding medical conditions of inmates (App. 687). This was despite at least four suicides during defendant England's term (App. 663) and seven citations by the Tennessee Corrections Institute in the five consecutive years

immediately prior to Lanthorn's death for failure to properly supervise at-risk prisoners (App. 1293-1366).

10. There was **no** in-service training for any Washington County Jail employee in 1993 or 1994 (App. 572-80). Even Lanthorn's death in August of 1994 did not change Washington County's customary indifference.

III. DEFENDANTS IGNORE THE MOST COMPELLING REASON FOR REVIEW

Defendants completely ignore the most compelling reason for review by this Court – the overwhelming evidence that the leading cause of death in jails and lockups is suicide involving our least culpable inmates – pretrial detainees incarcerated on minor charges with little or no criminal history. Defendants did not and cannot dispute that the ultimate deprivation (life) predictably and with alarming frequency has gone unchecked in our jails.

IV. DEFENDANTS FAILED TO SQUARELY ADDRESS EITHER OF THE TWO FUNDAMENTAL ERRORS IN THE WAY SUICIDE CASES ARE ANALYZED BELOW

To require that a jailer accurately predict a "strong likelihood" of suicide before liability may attach is overdemanding in light of this Court's decision in Farmer v. Brennan, 511 U.S 825 (1994). The Farmer analysis requires that a jailer subjectively draw the inference of **substantial risk** of **serious harm** (or it be so obvious that the jailer must have drawn the inference). "Substantial" is most analogous to the substantial evidence rule that requires administrative findings be upheld so long as there is material evidence (not a mere scintilla), even though the evidence may be **less than a preponderance**. *See* Balentine's Law Dictionary. "Risk" is merely the exposure to a **chance** of injury. *Id.* Thus, Farmer is fairly read to hold that an inference of material exposure to

a chance of serious injury triggers a duty to act reasonably to protect the inmate.

The courts below, however, generally require much more – a strong likelihood. "Strong" equates to powerful (see Blacks Law Dictionary) and "likelihood" requires a probability. *Id.* The Sixth Circuit's standard of "powerful probability" is clearly far more demanding than a preponderance standard or than Farmer's material exposure to a chance of serious injury." The standard applied to suicide cases in most of the circuits below simply cannot be fairly reconciled with this Court's standard for deliberate indifference in Farmer.

Moreover, defendants failed to address the unique requirement imposed in suicide cases below that the jailer must not only predict a strong likelihood of some serious injury, but must specifically meet an outcome specific test: that is, the jailer must **foresee the specific injury** – a requirement not imposed in any other medical needs case.

Worse yet, because the outcome in this case was a suicide, the courts below failed to even consider Lanthorn's claims for being denied his medication (which he undisputedly requested), denied his multiple requests to see his doctor, as well as the jailer's willful decision to ignore the medical technician's directive that Lanthorn's doctor be contacted, the excessive force used by Garland and the municipalities' failure to train. Compare this case with those not involving suicide, for example, with Hines v. Wilkinson, No. 94-3289, 1994 U.S. App. LEXIS 21598 (6th Cir., Aug. 10, 1994) (defendants delay in providing penicillin and pain medications prescribed by a dentist is actionable); Mawby v. Zent, No. 93-3583, 1993 U.S. App. LEXIS 31499 (6th Cir., Dec. 2, 1993) (refusal of Vitamin B6 and cutting course of treatment short is actionable); Shannon v. Lester, 519 F.2d 76 (6th Cir. 1975) (plaintiff may recover for any injury caused by delay in care and concomitant pain, suffering or mental

anguish); Rodriguez v. Jabe, No. 90-1010, 1990 US. App. LEXIS 9928 (6th Cir. 1990) (jailer's failure to provide hot-water bottle, Motrin and crutches is actionable.)

Defendants distort petitioners' position claiming that petitioners advocate a duty to provide care regardless of whether the actor recognizes a substantial risk of serious harm. Response at 20. That is plainly not correct. It is the overly demanding, outcome specific test that permits unconstitutional deliberate indifference to go unchallenged. No one can seriously dispute that suicide is serious harm. On these facts, the red flags (disorientation, bizarre behavior, etc.,) signaled the risk. Unquestionably, defendants Mitchell and Jamerson saw that risk (they claim they asked Lanthorn regarding same). The courts below, however, used the circumstantial evidence that defendants drew the inference of risk to exonerate defendants without inquiry into the reasonableness of the response to the known risk. That circular reasoning and the overdemanding, outcome specific standard, stripped Lanthorn of any meaningful Constitutional rights – even though he was only a pretrial detainee held on a misdemeanor.

As long as jailers are permitted to safely ignore the well known risk of jail shock and the well known indicators of increased risk of suicide, our least culpable detainees will continue to be our most frequent jail fatalities.

Respectfully submitted,

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